

SEC Proposes Amendments to the Definition of “Smaller Reporting Company”

The Securities and Exchange Commission recently published proposed amendments to the definition of “smaller reporting company” that would substantially increase the number of companies that have this status. The Proposed Rules will not become effective unless and until the SEC adopts final rules.

Background

In 1992, the SEC created Regulation S-B, a small business integrated registration and reporting system, which included the “small business issuer” definition. In 2007, the SEC established the smaller reporting company category of registrants, replacing the small business issuer definition. Smaller reporting companies benefit from relief from certain SEC compliance through “scaled disclosure”, which reduces the compliance burden for such companies.

Smaller reporting companies are defined as registrants with:

- less than \$75 million in public float as of the last business day of their most recently completed second fiscal quarter; or
- zero public float and annual revenues of less than \$50 million during the most recently completed fiscal year for which audited financial statements are available.

During 2015, approximately 42% of all public companies satisfied the definition of smaller reporting company.

Proposed Changes to Smaller Reporting Company Definition

Under the Proposed Rules, the definition of smaller reporting company would be amended as follows:

- Public float threshold would increase from \$75 million to **\$250 million**;
- Annual revenues threshold would increase from \$50 million to **\$100 million** for companies that do not have a public float; and
- Once a company exceeds either threshold, it will not qualify as a smaller reporting company again until public float is less than **\$200 million** or annual revenues decrease below **\$80 million**.

The SEC expects that there will be approximately 750 additional companies that would become eligible for smaller reporting company status because of the Proposed Rules.

Accelerated Filer Definition

The SEC is not proposing to amend the \$75 million public float threshold used to determine whether a registrant is an “accelerated filer”. If the Proposed Rules are adopted, then companies with public floats between \$75 million and \$250 million will qualify as both a smaller reporting company and accelerated filer. This will result in smaller reporting companies having to comply with accelerated periodic reporting filing deadlines and the auditor attestation report required by the Sarbanes Oxley Act unless the company satisfies the definition of “emerging growing company” under the Jumpstart Our Business Startups (JOBS) Act.

The SEC is also proposing to amend the definition of accelerated filer to eliminate a provision that specifically excludes smaller reporting companies from the definition of accelerated filer.

SECURITIES GROUP

PARTNERS

James M. Jenkins
jjenkins@hselaw.com

Daniel R. Kinel
dkinel@hselaw.com

Alexander R. McClean
amcclean@hselaw.com

COUNSEL

Kayla E. Klos
kklos@hselaw.com

ASSOCIATES

Jeffrey M. Donigan
jdonigan@hselaw.com

Amanda H. Dwyer
adwyer@hselaw.com

Michael J. Roche
mroche@hselaw.com

PARALEGAL

Diane G. Walker
dwalker@hselaw.com

Conclusion

If the Proposed Rules are adopted, it would be a welcome relief to companies with public floats between \$75 million and \$250 million. Microcap companies in many instances have thinly traded stocks and the lack of research coverage makes it difficult for them to raise capital and attract institutional investor following. While not solving all of the problems facing microcap companies, the Proposed Rules are a helpful step towards improving the environment for microcap companies.

If you would like more information regarding the Proposed Rules and how they may apply to your company, please contact a member of our firm's Securities Group at 585-232-6500. ■



Harter Secret & Emery LLP

ATTORNEYS AND COUNSELORS

ROCHESTER

1600 Bausch & Lomb Place
Rochester, NY 14604-2711
585.232.6500

BUFFALO

50 Fountain Plaza, Suite 1000
Buffalo, NY 14202-2293
716.853.1616

ALBANY

111 Washington Ave., Suite 303
Albany, NY 12210-2209
518.434.4377

CORNING

8 Denison Parkway East, Suite 403
Corning, New York 14830-2638
607.936.1042

NEW YORK

733 Third Avenue
New York, New York 10017
646.790.5884